United Nations CRC/C/OPSC/COD/CO/1

# Convention on the Rights of the Child

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Committee on the Rights of the Child

## Concluding observations on the report submitted by the Democratic Republic of the Congo under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*

### I. Introduction

1. The Committee considered the report of the Democratic Republic of the Congo (CRC/C/OPSC/COD/1) at its 2170th meeting (see CRC/C/SR.2170), held on 19 January 2017, and adopted the present concluding observations at its 2193rd meeting, held on 3 February 2017.

2. The Committee welcomes the submission of the report of the State party but regrets the absence of written replies to the list of issues, which would have allowed for a better understanding of the implementation of the Optional Protocol in the State party. The Committee appreciates the constructive dialogue held with the high-level delegation of the State party.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with the concluding observations on the third to fifth combined periodic reports submitted by the State party under the Convention on the Rights of the Child (CRC/C/COD/CO/3-5), adopted on 3 February 2017, and on the report of the State party submitted under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/COD/CO/1), adopted on 3 February 2012.

### II. General observations

**Positive aspects**

4. The Committee notes with appreciation the State party's ratification of:

(a) The United Nations Convention against Transnational Organized Crime, in 2005;

* Adopted by the Committee at its seventy-fourth session (16 January-3 February 2017).

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(b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in 2005;

(c) The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in 2005.

5. The Committee welcomes the following legislative measures taken by the State party in areas relevant to the implementation of the Optional Protocol, including the adoption of:

(a) The Act amending the Family Code of 1987, on 15 July 2016;

(b) Act No. 06/018 of 2006, which amends and completes the decree of 30 January 1940 on the Congolese Criminal Code;

(c) Act No. 06/019 of 2006, modifying and completing the decree of 6 August 1959 on the Congolese Criminal Procedure Code.

## III. Data

### Data collection

6. The Committee is seriously concerned about the absence of a mechanism for the systematic collection of data relating to the offences defined under the Optional Protocol and the lack of reliable information on reported cases, prosecutions and convictions, as well as on the general situation of children who are at high risk of exposure to such offences.

7. **The Committee urges the State party to:**

(a) **Develop and implement a comprehensive, coordinated and effective system of data collection and data analysis for all areas covered by the Optional Protocol, including data concerning the number of cases of, and prosecutions and convictions for, the sale of children, child prostitution, child pornography and child trafficking;**

(b) **Disaggregate the data by, inter alia, sex, age, national and ethnic origin, region and socioeconomic status, paying particular attention to children who are at risk of becoming victims of crimes covered by the Optional Protocol;**

(c) **Utilize the information collected for policy decisions, impact assessments and the monitoring of progress on the implementation of the Optional Protocol.**

## IV. General measures of implementation

### Legislation

8. The Committee notes that national legislation prohibits child prostitution and child pornography. However, it is concerned that the current criminal law does not explicitly address all offences covered by the Optional Protocol as defined in article 3 of the Optional Protocol. The Committee is particularly concerned about the absence of legislation explicitly defining and criminalizing all cases of sale of children, a concept similar, but not identical, to trafficking in children.

9. **The Committee recommends that the State party ensure that all acts and activities referred to in the Optional Protocol are fully covered under its criminal law, including all forms of sale of children.**

**Comprehensive policy and strategy**

10. The Committee is concerned about the lack of an overarching policy framework to coordinate the various laws and policies relevant to the implementation of the Optional Protocol and of a strategy for preventing the sale of children and protecting child victims of sexual exploitation.

11. **The Committee recommends that the State party:**

(a) **Include all issues covered under the Optional Protocol in a comprehensive policy and strategy for children's rights and allocate sufficient human and financial resources for its implementation. In doing so, the State party should pay particular attention to the implementation of all provisions of the Optional Protocol, taking into account the outcome documents adopted at the World Congresses against Commercial Sexual Exploitation of Children;**

(b) **Ensure the active and meaningful participation of children, communities and civil society organizations in the formulation of such a policy.**

**Coordination and evaluation**

12. The Committee notes with concern that the national council for children is not yet operational and regrets the lack of information on efforts to ensure the overall coordination of the implementation of the Optional Protocol.

13. **With reference to paragraph 9 of its concluding observations under the Convention (see CRC/C/COD/CO/3-5), the Committee recommends that the State party accelerate the signing of the decree that will make the national council for children operational. It also recommends that the State party ensure that the council has a clear mandate, as well as sufficient authority and appropriate human, technical and financial resources to provide coordination, leadership and general oversight for the monitoring and evaluation of activities relating to children's rights under the Optional Protocol.**

**Dissemination, awareness-raising and training**

14. The Committee regrets that awareness-raising about and training initiatives on the Optional Protocol have not been carried out systematically among judges, law enforcement officials and professionals working with and for children. The Committee is also concerned about the persisting stigmatization of and risk of retaliation against children who have suffered sexual abuse and exploitation, and their families, and the limited knowledge about the Optional Protocol among community leaders, children and their families, and society in general.

15. **The Committee recommends that the State party take all measures necessary to make the Optional Protocol widely known and:**

(a) **Develop and carry out multidisciplinary training, including specialized training on dealing with child victims, and capacity-building programmes for judges, law enforcement personnel, in particular the police, armed forces and United Nations peacekeeping troops, as well as other professionals working with and/or for children, in order to ensure that they can protect children effectively from the offences covered by the Optional Protocol;**

(b) **Equip professionals and institutions whose work relates to the offences covered by the Optional Protocol with operational tools, such as guidelines and protocols, for the effective implementation of laws, policies and programmes relevant to the implementation of the Optional Protocol;**

(c) **Carry out, on a regular and systematic basis, intensive awareness-raising activities on the provisions of the Optional Protocol, including mass media and local radio campaigns, involving community leaders and communities, local teachers, youth and children's groups and their families, and evaluate their impact. Such awareness-raising activities should focus on the prevention of sexual exploitation, addressing the stigma attached to victims and stressing the importance of, and encouraging, support for victims in the community.**

**Allocation of resources**

16. The Committee is concerned about the lack of identifiable budget allocations for the implementation of the Optional Protocol, particularly for the prevention of offences, efforts to combat the sale of children, child prostitution and child pornography, including specialist police and court services for children, and the provision of protection, support, rehabilitation and reintegration services to child victims. It is also concerned about the negative impact of mismanagement of funds and corruption on the implementation of the Optional Protocol.

17. **With reference to paragraph 10 of its concluding observations under the Convention (see CRC/C/COD/CO/3-5), the Committee recommends that the State party take all measures necessary to ensure the sufficient and targeted allocation of technical, human and financial resources for the development and implementation of programmes aimed at supporting prevention and the protection, physical and psychological recovery and social integration of victims. It also recommends that measures be taken to prevent and combat corruption to ensure the availability of resources at the national, regional and district levels.**

**Civil society**

18. The Committee notes that many of the services relevant to child victims of offences under the Optional Protocol are provided by national and international civil society organizations. However, the Committee is concerned that these organizations face difficulties in registering as associations, which affects their eligibility to receive funding, including from the State party, that government funding for the provision of such services is insufficient and that there is limited institutionalized cooperation in this regard.

19. **With reference to paragraph 13 of its concluding observations under the Convention (see CRC/C/COD/CO/3-5), the Committee recalls that the State party has the primary responsibility to provide the child protection and welfare services necessary to protect children from offences covered by the Optional Protocol, and recommends that the State party:**

(a) **Facilitate the registration of civil society organizations engaged in providing protection and support services to child victims of offences covered by the Optional Protocol;**

(b) **Review the adequacy of the budget allocations for service delivery by the Government and the adequacy of the funding for service delivery by civil society organizations;**

(c) **Strengthen cooperation with civil society organizations in the development, implementation and monitoring of programmes of assistance, psychosocial rehabilitation and social reintegration for child victims of offences covered by the Optional Protocol.**

## V. Prevention of the sale of children, child prostitution and child pornography (art. 9 (1) and (2))

**Measures adopted to prevent offences prohibited under the Optional Protocol**

20. The Committee notes with concern that existing initiatives to prevent the offences prohibited under the Optional Protocol are insufficient, remain isolated and underresourced and are not grounded on a specific preventive strategy to address the root causes of their occurrence and reoccurrence, which include, inter alia, gender-based discrimination and violence, persistent insecurity, poverty, forced child domestic labour, forced labour in and around the mining sector, internal displacement and migration, lack of access to education, and children forced to live and/or work in the street. It regrets that the State party did not provide sufficient information on programmes aimed at preventing offences prohibited under the Optional Protocol and the impact of such programmes. The Committee is concerned that:

(a) There are no mechanisms in place to detect, identify and monitor children at risk of becoming victims of the offences covered by the Optional Protocol;

(b) Harmful practices, such as child marriage and forced marriage, are still prevalent and culturally condoned;

(c) Despite efforts to improve birth registration, some children remain unregistered, making them especially vulnerable to offences covered by the Optional Protocol.

21. **The Committee recommends that the State party carry out a study to analyse and evaluate the nature, extent, root causes, and consequences on children of the offences covered by the Optional Protocol in the State party, with a view to developing and adopting a comprehensive prevention strategy against, in particular, the sale of children, child prostitution and child pornography. The Committee also recommends that the State party allocate the human and financial resources necessary to carry out the strategy. It further recommends that the State party ensure the full implementation of the recommendations made by the Committee under the Convention (see CRC/C/COD/CO/3-5), especially those relating to non-discrimination (para. 15), children deprived of a family environment (para. 32), standard of living (para. 38), education and aims of education (para. 40), refugee and internally displaced children (para. 41) and children in street situations (para. 43), and that it:**

(a) **Strengthen its efforts to identify, report and support children who are at risk of becoming victims, or are victims, of offences covered by the Optional Protocol and their families, including through civil society organizations and community-based organizations;**

(b) **Strengthen its efforts to eliminate culturally sanctioned harmful practices that amount to the sale of children, paying particular attention to groups of children who are in the most vulnerable situations;**

(c) **Continue and strengthen measures to ensure that all children are registered at birth.**

**Adoption**

22. The Committee is concerned that the current legislative framework around intercountry adoption is insufficient to adequately protect children, and may give rise to the sale of children for such purposes. The Committee is also concerned about the insufficient legal or policy measures to prevent intermediaries from attempting to persuade biological

families to relinquish their children for adoption as a consequence of soliciting, coercion or inducement. The Committee is also concerned about the activities of organized networks that carry out the sale of children under the guise of adoption.

23. **With reference to paragraph 33 of its concluding observations under the Convention (see CRC/C/COD/CO/3-5), the Committee reminds the State of its obligations under article 3 (5) of the Optional Protocol to take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments, and its obligation to ensure that any adoption is in the best interests of the child. In particular, the Committee urges the State party to:**

(a) **Develop and implement strict criteria for the adoption of children and ensure that exhaustion of all means to prevent termination of parental responsibility and/or separation of the child is set as a clear criterion in all cases involving adoption;**

(b) **Take all measures necessary to ensure that there is no remuneration or any other consideration received in relation to adoption;**

(c) **Expedite the adoption of legislation for intercountry adoption, ensuring the participation of civil society organizations and children's organizations in its elaboration;**

(d) **Investigate all cases of irregular adoption, sale or trafficking of children and improper inducement of consent of parents to give up their parental responsibilities of their child for the purpose of his or her future adoption, and carry out awareness-raising programmes at the community level;**

(e) **Consider ratifying the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption.**

**Measures to prevent and combat online child sexual exploitation and abuse**

24. The Committee welcomes information about recent training in the State party on combating cybercrime. However, it is concerned about the absence of information on a national strategy to prevent and combat online child sexual exploitation and abuse.

25. **With reference to Human Rights Council resolution 31/7 on the rights of the child, which addresses information and communications technologies and child sexual exploitation, and to the outcomes of the 2014 London and 2015 Abu Dhabi "We Protect" summits, the Committee recommends that the State party adopt a national response for preventing and addressing online child sexual exploitation and abuse, in close collaboration with relevant industries and organizations, including:**

(a) **A national policy to prevent and respond to online child sexual exploitation and abuse through an appropriate legal framework, a dedicated coordination and oversight entity, and specific analysis, research and monitoring capabilities;**

(b) **A strategy for preventing online child sexual exploitation and abuse, including a public education programme to increase awareness, knowledge and reporting of online child sexual exploitation and abuse offences and specialized training for police, prosecution and judiciary personnel.**

## VI. Prohibition of the sale of children, child pornography and child prostitution and related matters (arts. 3, 4 (2) and (3) and 5-7)

**Existing criminal or penal laws and regulations**

26. The Committee welcomes the incorporation of some of the provisions of the Optional Protocol into national laws. It also notes the ongoing reform of criminal legislation. Nevertheless, the Committee is seriously concerned about:

(a) The insufficient implementation of existing laws that protect children, and the fact that the national legislation, including the Act on the protection of children (Child Protection Code) and the Criminal Code, do not define and criminalize all forms of offences covered by the Optional Protocol;

(b) The lack of a specific legal provision that defines and prohibits the sale of children for sexual purposes, despite the high number of child victims of such offences, particularly girls, which results in impunity for perpetrators;

(c) The absence of legislative provisions, particularly in the Child Protection Code, to criminalize the sexual exploitation and harassment of children through information and communications technology;

(d) The weak enforcement of existing legislation and the lack of resources to arrest and prosecute defendants.

27. **The Committee urges the State party to expedite its criminal law reform, and recommends that it define and criminalize the sale of children in conformity with articles 2 and 3 of the Optional Protocol. It urges the State party to ensure that any new laws explicitly provide for the prosecution and punishment of perpetrators, effective protection of victims and adequate redress. In particular, the State party should explicitly define and criminalize:**

(a) **Child pornography, in accordance with article 3 of the Optional Protocol;**

(b) **The sale of children through illegal adoption;**

(c) **The transfer of organs of a child for profit and the engagement of a child in forced labour as forms of sale of children;**

(d) **The sale of children for sexual exploitation;**

(e) **"Grooming" of children for involvement in sexual activities facilitated by the Internet and other information and communications technologies, and develop and strengthen awareness-raising programmes for children on the risks related to the use of self-generated content through digital media and information and communications technologies.**

**Impunity**

28. The Committee notes with concern the lack of information regarding the number of cases that are duly investigated and the number of perpetrators who are prosecuted and sentenced. It also notes that complaints of offences covered by the Optional Protocol are rare and that the number of investigations, prosecutions and convictions is extremely low, and is concerned about the widespread impunity. The Committee is also concerned about the high levels of corruption among State security forces, including army and border officials, which result in the underreporting of crimes covered by the Optional Protocol.

29. **The Committee recommends that the State party:**

**(a) Take all measures necessary to combat impunity and ensure that all crimes covered by the Optional Protocol are investigated effectively and that perpetrators are brought to justice and, if allegations against them are substantiated, punished with appropriate sanctions commensurate with the gravity of their crimes;**

**(b) Increase the human and financial resources of law enforcement personnel and of the judiciary in order to strengthen their capacity to respond to acts prohibited under the Optional Protocol in a child-sensitive manner;**

**(c) Take steps to prevent corruption, such as building transparent, accountable systems of governance, strengthening the personal ethics of public officials and strengthening access to information by civil society organizations and members of the media, as well as measures to detect, investigate and prosecute corruption effectively.**

**Liability of legal persons**

30. The Committee notes with concern that the State party's legislation does not establish the liability of legal persons for the offences established in the Optional Protocol.

31. **In the light of article 3 (4) of the Optional Protocol, the Committee recommends that the State party establish the liability of legal persons for all offences covered under the Optional Protocol.**

**Jurisdiction and extradition**

32. The Committee notes the existence in the State party of agreements on extraterritorial judicial cooperation. The Committee regrets, however, that the legislation in the State party does not explicitly allow extraterritorial jurisdiction for all offences covered by the Optional Protocol. The Committee also regrets that, where extraterritorial jurisdiction over offences covered by the Optional Protocol is allowed, it requires double criminality. Furthermore, the Committee notes that the State party does not rely on the Optional Protocol as a legal basis for extradition.

33. **The Committee recommends that the State party take all steps necessary to ensure that its domestic legislation explicitly enables it to establish and exercise extraterritorial jurisdiction over all offences prohibited under the Optional Protocol. The Committee also recommends that the State party remove the requirement of double criminality for extraterritorial jurisdiction in respect of offences covered by the Optional Protocol and to consider using the Optional Protocol as a legal basis for extradition in respect of such offences in cases where there is no bilateral extradition treaty with the other country concerned.**

## VII. Protection of the rights of child victims (arts. 8 and 9 (3) and (4))

**Measures adopted to protect the rights and interests of child victims of offences prohibited under the Optional Protocol**

34. The Committee notes the information provided about innovative practices supported by civil society organizations, such as mobile court hearings that are aimed at bringing the justice system closer to remote and marginalized areas of the State party. The Committee is, however, seriously concerned about:

(a) The insufficiency of resources and child-sensitive procedures for identifying child victims and witnesses of the offences prohibited under the Optional Protocol;

(b) The inadequate consideration of the rights and interests of child victims and witnesses and the insufficiency of measures to ensure the protection of children and their families before, during and after criminal proceedings;

(c) The lack of free legal aid and the insufficient number of, and support from, child psychologists and social workers in court processes;

(d) The lack of clear and accessible reporting systems for the offences prohibited under the Optional Protocol.

35. **In the light of article 9 (3) of the Optional Protocol, the Committee urges the State party to adopt appropriate measures to protect the rights and interests of child victims and witnesses of the practices prohibited under the Optional Protocol at all stages of the criminal justice process, and that it adopt clear and accessible reporting systems. In particular, the Committee recommends that the State party ensure:**

(a) **The adoption of clear measures to identify child victims of sale, prostitution and pornography and to guide the rescue, repatriation, rehabilitation and reintegration of child victims of sale, prostitution and pornography, as well as the treatment of child victims as victims and not as criminals by law enforcement and judicial authorities;**

(b) **Child-sensitive legal and investigative procedures, including child-sensitive methods of questioning;**

(c) **The protection of the privacy of child victims and witnesses in investigation and trial procedures, as well as legal and practical measures to guarantee appropriate and sufficient protection of child witnesses from intimidation and retaliation;**

(d) **The provision of free legal aid and the support of medical personnel, child psychologists and social workers for child victims during the justice process.**

**Recovery and reintegration of victims**

36. The Committee is concerned about:

(a) The lack of a clear procedure or referral service for the protection and care of child victims of sexual exploitation and abuse, and the absence of any systematic provision of care for child victims;

(b) The limited involvement of the State party in social reintegration and physical and psychological recovery measures, and that such initiatives are carried out almost exclusively by civil society organizations;

(c) The lack of a victim-centred approach, in particular for victims of child sexual exploitation.

37. **The Committee recommends that the State party develop mechanisms to ensure that children who are victims of offences prohibited under the Optional Protocol can access protection and care services, including psychological assistance and counselling and medical care. It calls on the State party to allocate sufficient human, financial and technical resources for the full social reintegration and physical and psychological recovery of such children, in accordance with article 9 (3) of the Optional Protocol, ensuring the safety and well-being of each child victim.**

38. The Committee regrets the absence of information on specific measures to protect child victims and witnesses of sexual abuse and exploitation by peacekeeping personnel belonging to the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo. It also notes with concern the absence of efforts to maintain data on

the outcome of cases referred to the State party and on the response to and prevention of such occurrences.

39. **The Committee recommends that the State party ensure that child victims and witnesses of sexual abuse and exploitation receive timely and adequate care and support, including legal, medical and psychosocial support, and monetary compensation or other reparations. It also recommends that the State party ensure the expeditious and effective investigation of all allegations of abuse and, if the allegations are substantiated, that the perpetrators are prosecuted. The Committee also recommends that the State party strengthen data gaps with a view to obtaining an adequate overview of responses and to strengthening preventive measures to ensure that the rights of children are respected and protected.**

40. The Committee is concerned that a significant number of girls remain victims of sexual exploitation and forced labour in the hands of armed groups.

41. **With reference to the recommendation contained in paragraph 48 of the concluding observations under the Convention (see CRC/C/COD/CO/3-5), the Committee recommends that the State party take further measures to ensure the full social reintegration and full physical and psychological recovery of girl victims of offences prohibited under the Optional Protocol committed by armed groups, and:**

(a) **Ensure that those girls benefit from dedicated disarmament and demobilization efforts and reintegration and community-based programmes for children formerly associated with armed groups, by ensuring that such support is accessible, appropriate and sustainable and takes into account the specific situation of girls;**

(b) **Strengthen awareness-raising initiatives to promote the social acceptance and reintegration of girl victims of offences prohibited under the Optional Protocol committed by armed groups.**

## VIII. International assistance and cooperation (art. 10)

**Multilateral, regional and bilateral agreements**

42. **In the light of article 10 (1) of the Optional Protocol, the Committee encourages the State party to continue to strengthen international cooperation through multilateral, regional and bilateral arrangements, especially with neighbouring countries, including by strengthening procedures and mechanisms for coordinating the implementation of such arrangements, with a view to making progress in respect of the prevention of offences covered by the Optional Protocol and the detection, investigation, prosecution and punishment of those responsible for any such offences.**

## IX. Implementation and reporting

### A. Follow-up and dissemination

43. **The Committee recommends that the State party take all appropriate measures to ensure that the recommendations contained in the present concluding observations are fully implemented, including by transmitting them to the relevant Government ministries, the parliament and national and local authorities for appropriate consideration and further action.**

44. **The Committee recommends that the report and any written replies submitted by the State party and the present concluding observations be made widely available, including through the Internet, to the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate on and awareness of the Optional Protocol and its implementation and monitoring.**

## B. Next report

45. **In accordance with article 12 (2), the Committee requests the State party to include further information on the implementation of the Optional Protocol and the present concluding observations in its next periodic report, to be submitted in accordance with article 44 of the Convention.**